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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,126	02/22/2002	Samuel W. Harrison	2035077-0003	9195

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MARK J. YOUNG
50 N. LAURA STREET
SUITE 3300
JACKSONVILLE, FL 32202

EXAMINER

LUU, TUYET PHUONG PHAM

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 01/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/080,126

Applicant(s)

HARRISON ET AL.

Examiner

Teri P. Luu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-14, 21-23, 42, 43 and 48 is/are rejected.
- 7) ☒ Claim(s) 10, 15-20, 24-41, 44-47 and 49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 . 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 12, 14, 21, 22, 23 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,596,781 to Graebe.

Graebe discloses a mattress comprising a cushion layer (90), a lifting cell layer comprised of a plurality of lifting cells (12), a bottom layer (13) and an overlay mattress cover (91).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,321,404 to Tsai in view of Graebe.

Tsai discloses a mattress comprising a lifting cell layer comprised of a plurality of lifting cells, a bottom layer, and a mattress layer. The lifting cell layers are releasably attached to the bottom layer via hook and loop fasteners (126). Tsai fails to teach the mattress comprising a cushion layer. Graebe discloses a mattress comprising a cushion layer. It would have been

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obvious to one having ordinary skill in the art at the time the invention was made to provide the mattress of Tsai with a cushion layer in order to provide additional comfort to the user.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graebe in view of U.S. Patent No. 5,560,057 to Madsen et al.

Graebe discloses the claimed invention except for releasable attaching means for releasably attaching the mattress to a support surface. Madsen discloses a mattress comprising releasable attachment means (168) for releasably attaching the mattress to the bed frame (F). It would have been obvious to one having ordinary skill in the art at the time the invention was made provide the Graebe with interengaging straps so as to provide a means of releasably attaching the mattress to a support surface

Claims 4, 5, 13 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graebe in view of U.S. Patent No. 6,611,979 to Welling et al.

Graebe discloses the claimed invention except for a thermal layer for controlling the temperature of the patient support surface. Welling discloses a mattress comprising a thermal layer (340) and a heating control unit (692) that regulates the temperature and timing of the heating. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Graebe with a thermal layer so as to provide a means of heating the mattress.

As concerns claim 13, Graebe also fails to disclose the mattress being formed of radiolucent material. Welling et al. teaches the mattress being formed of radiolucent material to facilitate taking X-rays. Thus, it would have been obvious to one having ordinary skill in the art

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at the time the invention was made to provide the mattress of Graebe of radiolucent material to facilitate taking X-rays.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graebe in view of Welling et al. as applied to claim 4 above and further in view of U.S. Patent No. 6,119,292 to Haas.

Graebe, as modified, discloses the claimed invention except for a thermal layer being a thermal bladder for containing thermal fluid. However, Haas discloses it is well known in the art to provide heat to a mattress via thermal fluid. Thus, it would have been within the knowledge of one skilled in the art to provide the thermal layer as a thermal bladder.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graebe in view of U.S. Patent No. 4,538,311 to Hall et al.

Graebe discloses the claimed invention except for the cover being puncture-resistant. However, Hall et al. discloses that mattress cover formed of puncture-resistant materials are well known in the art. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the mattress cover of Graebe of puncture-resistant material so as to prevent the puncture of the lifting cells.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai in view of Graebe, as applied to claim 42 above, and further in view of Welling et al.

Tsai, as modified, discloses the claimed invention except for a thermal layer for controlling the temperature of the patient support surface. Welling discloses a mattress comprising a thermal layer (340) and a heating control unit (692) that regulates the temperature

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and timing of the heating. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Tsai with a thermal layer so as to provide a means of heating the mattress.

Allowable Subject Matter

Claims 10, 15-20, 24-41, 44-47 and 49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Teri Pham Luu** whose telephone number is **(703) 305-7421**. The examiner can be best reached Monday-Friday from 6:30 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Heather Shackelford**, can be reached at **(703) 308-2978**.

Submission of your response by facsimile transmission is encouraged. Technology Center 3600's facsimile number for all official papers is **(703) 872-9306**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitted by facsimile transmission separately from the check.

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Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. _____) on (Date) _____

(Typed or printed name of person signing this certificate)

(Signature)


If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be directed to **heather.shackelford@uspto.gov**.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed expressed waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature relating to the status of this application should be directed to the group receptionist at **(703) 308-2168**.

tpl
January 12, 2004


TERI PHAM LUU
PRIMARY EXAMINER